

FILED

AUG 27 2012

United States Bankruptcy Court
San Jose, California

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 11-55099-ASW
Stephen and Nicole Conely,]	Chapter 13
Debtor.]	Adv. Proc. No. 11-05272
AutoSource Capital, Inc.]	
Plaintiff]	
vs.]	
Stephen and Nicole Conely]	
Debtors]	

MEMORANDUM DECISION GRANTING MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED COMPLAINT, FILED JUNE 5, 2012

Before the Court is a motion of Stephen and Nicole Conely ("Movants") to dismiss the Second Amended Complaint of Plaintiff AutoSource Capital, Inc. ("Plaintiff"). Plaintiff filed the Second Amended Complaint ("Complaint") on June 5, 2012 and, despite an earlier first amended complaint filed on March 9, 2012, the

1 Complaint is erroneously captioned as another first amended
2 complaint. The motion to dismiss ("Motion"), requests dismissal on
3 the grounds that the Complaint fails to state a claim upon which
4 relief can be granted pursuant to Rule 12(b)(6) of the Federal
5 Rules of Civil Procedure, which is adopted by Rule 7012(b) of the
6 Federal Rules of Bankruptcy Procedure. Movants are represented by
7 attorney Joseph Angelo, and Plaintiff is represented by attorney
8 Kathryn S. Diemer. For the following reasons, the Motion is
9 granted.


10 The Court dismissed Plaintiff's first amended complaint on May
11 15 2012, stating that the first amended complaint did not contain
12 "enough facts to state a claim to relief that is plausible on its
13 face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct.
14 1955, 1974 (2007). The current Complaint is, word-for-word,
15 identical to the first amended complaint that the Court dismissed
16 on May 15 2012. As a result, the Complaint suffers from precisely
17 the same defects that warranted dismissal of Plaintiff's first
18 amended complaint.

19 For the foregoing reasons, the Court grants Movant's request
20 for dismissal of Plaintiff's Second Amended Complaint, pursuant to
21 Rule 12(b)(6) of the Federal Rules of Civil Procedure. Because
22 Plaintiff has already received two opportunities to amend the
23 Complaint but has failed to adequately plead a claim for relief,
24 dismissal is with prejudice. In light of the dismissal, the
25 hearing on the Motion set for August 28, 2012 at 3:00 p.m. and the
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1 case management conference set for November 7, 2012 at 3:00 p.m.
2 are both off calendar.

3 IT IS SO ORDERED.

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5 Dated: 8/27/10

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8 ARTHUR S. WEISSBRODT
9 UNITED STATES BANKRUPTCY JUDGE
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